APPEAL NO. 021487
FILED JULY 24, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing was held on May 16, 2002. The hearing officer resolved the disputed issues by determining that the respondent/cross-appellant (claimant) sustained a compensable occupational disease injury with a date of injury of _____; that the claimant had disability from November 6, 2001, through November 28, 2001; that the claimant timely reported the injury to the employer; that the claimant is not barred from pursuing Texas Workers' Compensation benefits because of an election to receive benefits under a group health insurance policy; and that the claimant is not entitled to change treating doctors. The appellant/cross-respondent (carrier) urges on appeal that the evidence does not support the compensability, disability, timely notice, and election-of-remedies determinations. Additionally, the carrier urges that the hearing officer erroneously notes in the decision that the parties stipulated that the claimant sustained a compensable occupational disease injury. The claimant appeals the ending date of the disability determination and urges that she should be allowed to change treating doctors. Both claimant and carrier filed responses to the opposing party's request for review.

DECISION

Affirmed as reformed.

As noted by the carrier on appeal, there is no indication that the parties stipulated to the compensability of an occupational disease injury. Consequently, the decision is reformed to delete Finding of Fact No. 1D. We have reviewed the remaining issues complained of by both the claimant and the carrier on appeal and conclude that they presented factual questions for the hearing officer to resolve. Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). The decision was not, in our opinion, premised on the erroneous stipulation but by review of the facts.

The hearing officer did not err in determining that no election of remedies was made by the use of group health insurance coverage; the election-of-remedies defense has been abrogated in the 1989 Act. Valley Forge Insurance Co. v. Austin, 65 S.W.3d 371 (Tex. App.-Dallas 2001, pet. filed).

When reviewing a hearing officer's decision for factual sufficiency of the evidence, we should reverse such decision only if it is so contrary to the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986). Applying this standard, we find no grounds to reverse the decision of the hearing officer.

The true corporate name of the carrier is **PACIFIC EMPLOYERS INSURANCE COMPANY** and the name and address of its registered agent for service of process is

C. T. CORPORATION SYSTEM
350 NORTH ST. PAUL
DALLAS, TEXAS 75201.

_____
Susan M. Kelley
Appeals Judge

CONCUR:

_____
Robert W. Potts
Appeals Judge

_____
Roy L. Warren
Appeals Judge